IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18306 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI MILKHIRAM CHANDALA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 18306 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 12/12/2003 by which he is detained under P.A.S.A. In the grounds of detention, which are at page 15, Annexure-B, there is a reference of four criminal cases against the petitioner. Out of these four cases, first case is registered under Section 394 of I.P.C. and other three cases are under

Section 379 of I.P.C. The detaining authority after satisfying subjectively about the activities of the petitioner has detained him, which order is under challenge in this petition.

2) Mr.Kachhavah, learned advocate for the petitioner submitted that the cases in question are of individual nature, which are cases of theft, therefore, it cannot be said that the petitioner has disturbed the public order. It is submitted by Mr.Kacchavah that all these cases at the most be said to be the cases of disturbance of law and order situation. He further submitted that the petitioner is already in judicial custody and the bail application preferred in cases No.3 and 4 are rejected and for cases No.1 and 2 the petitioner has not even preferred any bail application. It is submitted by Mr.Kacchavah that the authority has not stated as to on what basis an opinion is formed that the petitioner may be released on bail even though he has not preferred any bail application.

3) To substantiate his say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

"There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the

> detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

4) So far as the aforesaid aspect is concerned, in my view, the authority has not stated as to on what basis it has reached to the satisfaction that the petitioner will be released on bail at any point of time. It is not in dispute that the petitioner has not even filed any application for bail regarding two cases. Since this aspect is not highlighted in the order as to on what basis such opinion is formed that the petitioner is likely to be released on bail even though he has not filed any bail application, the order of detention is required to be set aside and is accordingly set aside.

5) Accordingly, this petition is allowed. The order of detention dated 12-12-2003 is quashed and set aside. The detenu, Dineshbhai Milkhiram Chandala is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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